

UNITED STATES OF AMERICA 95 FERC ¶ 61,167  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, and Linda Breathitt.

AES Southland, Inc.  
Williams Energy Marketing & Trading Company

Docket No. IN01-3-001

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued April 30, 2001)

This order approves the attached Stipulation and Consent Agreement that resolves all issues in this docket. This docket was opened with a show cause order issued by the Commission on March 14, 2001 (show cause order).<sup>1</sup> That order was based on information received in a preliminary, non-public investigation conducted by the Commission's staff, which raised serious questions regarding whether AES Southland, Inc., including subsidiaries AES Alamitos, L.L.C. and AES Huntington Beach, L.L.C. (collectively, AES) and Williams Energy Marketing & Trading Company (Williams) violated contracts and tariffs on file with the Commission when two generation units located in Southern California were unavailable to be dispatched by the California Independent System Operator (ISO). The Market Oversight and Enforcement section, Office of the General Counsel (Market Oversight and Enforcement) entered into a settlement agreement with AES and Williams with respect to all issues raised in the show cause order.

**The Show Cause Order**

Williams is a wholesale seller of electric energy in California with authority to charge market based rates. Williams has filed contracts with the Commission in connection with its authority to make reliability must-run (RMR) sales to the ISO. Pursuant to these agreements, the ISO may dispatch designated units to provide energy and ancillary service essential to the reliability of the California transmission network. Williams exclusively markets power from the Alamitos and Huntington Beach plants, which AES owns, operates and maintains. Williams and AES have executed a Capacity Sale and Tolling Agreement (Tolling Agreement) that sets forth terms and conditions

under which AES sells power to Williams from the Alamitos and Huntington Beach plants.

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<sup>1</sup>AES Southland, Inc. and Williams Energy Marketing & Trading Company, 94 FERC ¶ 61,248 (2001).

Unit 4 at the Alamos plant and Unit 2 at the Huntington Beach plant were designated as RMR units in the year 2000. The ISO was unable to dispatch Alamos 4 from April 25 through May 5, 2000 because it was unavailable for service. Accordingly, to provide needed reliability service, the ISO called upon another Alamos unit, Alamos 3, to provide replacement service. The RMR contract terms regarding payment did not apply to service provided by the replacement unit. Instead, the ISO called the unit out-of-sequence, which meant that the applicable rate was the bid price that Williams had submitted for that unit. The bid price was at or very near the then-maximum bid price of \$750 per megawatt hour.

In addition, the ISO was unable to dispatch Huntington Beach 2 from May 6 through May 11, 2000 because it was also unavailable for service. The ISO called upon the only unit owned by AES that could provide replacement service: Alamos 5. Once again, the ISO's out-of-sequence call meant that Williams' applicable bid price at or near \$750 per megawatt hour applied to the replacement service provided by Alamos 5. The estimated average variable operating cost of the non-RMR units during the dates at issue was approximately \$63 per megawatt hour. The show cause order indicated that Williams received approximately \$10.85 million in additional revenue after costs, and including interest, as a result of the unavailability of the designated RMR units from April 25 through May 11, 2000. Specific information regarding the actions of AES and Williams relative to the outages discussed in this proceeding is contained in a non-public Appendix to the show cause order.

The chief issues questioned by the show cause order were whether, and, if so, the extent to which, (1) Williams and AES coordinated the timing and length of the outages and (2) AES failed to maintain the units according to standards set forth in the agreements filed with the Commission. Actions inconsistent with rate agreements on file with the Commission, such as the RMR agreements and the Tolling Agreement, constitute violations of section 205 of the Federal Power Act (FPA).<sup>2</sup> In the show cause order, the Commission directed Williams to explain why its actions with respect to these matters did not violate contracts and tariffs on file with the Commission, and its market-based rate authority. The order also directed AES to explain why its actions did not violate contracts on file with the Commission.

## Procedural Issues

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<sup>2</sup>16 U.S.C. § 824d (1994).

On April 3, 2001, the Public Utilities Commission of the State of California (CPUC) filed a notice of intervention in this docket pursuant to Rule 214(a)(2) of the Commission's Rules of Practice and Procedure.<sup>3</sup>

The show cause order provided that the Commission would publicly disclose the non-public Appendix within five days of the date of the show cause order, unless Williams or AES provided a justification for continued confidentiality. Upon requests of AES, supported by Williams, the Commission extended the time for filing a justification several times. The show cause order also directed AES and Williams to file a responsive pleading by April 3, 2001. This deadline was subsequently extended to April 16, 2001.

### **The Agreement**

Williams and AES have entered into an Agreement with Market Oversight and Enforcement which, if approved by the Commission, would terminate this docket. In the Agreement, Williams agrees to refund \$8 million to the ISO. This refund will reimburse the ISO for the additional revenues it paid Williams because of the outages described above. Williams also agrees to a prospective condition on its authority to make bulk power sales at market-based rates. For a one year period beginning on the date that the Commission approves the Agreement, Williams will bear the financial risk of designated RMR unit outages. Under this provision of the Agreement, if an RMR unit at the Alamitos or Huntington Beach plants is unavailable due to a forced outage, the ISO may call a non-RMR unit at either plant to provide replacement service for the same price that the ISO would have paid Williams had the designated RMR unit been available.

The Agreement references the non-public Appendix to the show cause order. The non-public Appendix contains information obtained in the investigation that supported issuance of the show cause order. The Agreement recognizes in part IV.D that the non-public Appendix contains information of the type that would qualify for an exemption to public disclosure under the Freedom of Information Act,<sup>4</sup> pursuant to subparts of section 388.107(g) of the Commission's regulations.<sup>5</sup>

The Agreement is to be a final settlement of all civil and administrative claims of the Commission relating to the operation of Alamitos 4 and Huntington Beach 2 from April 25, 2000 through May 11, 2000. Williams and AES do not admit that they engaged in any violation or wrongdoing relating to any matter that is settled by the Agreement.

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<sup>3</sup>18 C.F.R. § 385.214(a)(2) (2000).

<sup>4</sup>See 5 U.S.C. §§ 552(b)(7)(A) - (C) (1994).

<sup>5</sup>18 C.F.R. §§ 388.107(g) (1) - (3) (2000).

## Discussion

The Commission finds that the Agreement is fair and reasonable and in the public interest. It expeditiously resolves a number of complex issues with respect to the operation of generation units in an environment in which financial incentives existed for the withholding of capacity. By approving the Agreement, the Commission makes no finding on the merits of the questions raised in the investigation and discussed in the show cause order.

The Commission agrees with the statement in part IV.D of the Agreement that the non-public Appendix contains the type of information that is exempt from public disclosure. Public disclosure of the non-public Appendix could interfere with continued enforcement proceedings with respect to bulk power markets in California, and could have other adverse consequences as well. The information in the non-public Appendix satisfies the criteria in FOIA and the subparts of the Commission regulations cited above for public nondisclosure. Accordingly, the Commission will not make public the non-public Appendix pursuant to section 1b.9(a) of its regulations without an order of a court.<sup>6</sup>

The CPUC, as a state commission, became a party to this proceeding upon the filing of its notice of intervention. The CPUC asserts that refunds for abuse of market power should include a penalty, above the amount of the refund, to deter abusive behavior by market participants. In support of its position, the CPUC cites Pacific Gas & Electric Company, 81 FERC ¶ 61,122 (1997), in which the Commission discussed issues relating to the market power abuse. The CPUC also urges the

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<sup>6</sup>Section 1b.9 of the Commission's regulations, 18 C.F.R. § 1b.9 (2000), states as follows:

All information and documents obtained during the course of an investigation, whether or not obtained pursuant to subpoena, and all investigative proceedings shall be treated as non-public by the Commission and its staff except to the extent that (a) the Commission directs or authorizes the public disclosure of the investigation; (b) the information or documents are made a matter of public record during the course of an adjudicatory proceeding; or (c) disclosure is required by the Freedom of Information Act, 5 U.S.C. 552. Procedures by which persons submitting information to the Commission during the course of an investigation may specifically seek confidential treatment of information for purposes of Freedom of Information Act disclosure are set forth in 18 CFR part 3b and § 1b.20. A request for confidential information for purposes of Freedom of Information Act disclosure shall not, however, prevent disclosure for law enforcement purposes or when disclosure is otherwise found appropriate in the public interest and permitted by law.

Commission to "consider ordering refunds akin to the treble damages which would be ordered in an antitrust case."<sup>7</sup>

As discussed above, the Commission makes no findings in this proceeding. The Commission has not concluded that Williams or AES committed an abuse of market power. Therefore, there is no basis for CPUC's proposed remedy that the Commission should order the companies in this proceeding to pay a penalty in excess of any refund amount. Further, the Commission's discussion of penalties in Pacific Gas & Electric Company related to authority of the ISO or the California Power Exchange, not the Commission, to order penalties in appropriate cases.<sup>8</sup> In any event, while the Commission can order equitable remedies, such as disgorgement of unjust enrichment,<sup>9</sup> the Commission does not have authority to order treble damages as under the antitrust laws.<sup>10</sup>

In paragraph (E) of the show cause order, the Commission directed the General Counsel and persons designated by him to institute a formal, non-public investigation of any and all violations arising out of conduct of Williams and AES, including their parents, subsidiary companies and affiliates, as relevant, with respect to the operation, maintenance and sales of power from the Alamitos and Huntington Beach plants in 2000 and 2001, with full subpoena power. This order does not affect that investigation, except that the formal investigation will not address the matters settled by the Agreement.

The Commission's approval of the Agreement terminates the show cause proceeding.

The Commission orders:

(A) The Commission approves the attached Stipulation and Consent Agreement without modification.

(B) The Commission's approval of the Agreement does not constitute precedent regarding any principle or issue in this docket.

(C) The show cause proceeding in Docket No. IN01-3-000 is terminated.

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<sup>7</sup>CPUC Notice of Intervention, at 3.

<sup>8</sup>81 FERC at 61,553-554.

<sup>9</sup>See, generally, Transcontinental Gas Pipe Line Corp. v. FERC, 998 F.2d 1313 (5th Cir. 1993) (and cases cited therein).

<sup>10</sup>See, e.g., Sunflower Electric Cooperative v. Kansas Power & Light Co., 603 F.2d 791 (10th Cir. 1979).

By the Commission. Commissioner Massey concurred with a separate  
statement attached.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

AES Southland, Inc.  
Williams Energy Marketing & Trading, Inc.

Docket No. IN01-3-001

**STIPULATION AND CONSENT AGREEMENT**

**I.**

The Market Oversight and Enforcement Section, Office of the General Counsel (Market Oversight and Enforcement), Williams Energy Marketing & Trading Company (Williams) and AES Southland, Inc., including subsidiaries AES Alamitos, L.L.C. and AES Huntington Beach, L.L.C. (collectively, AES Southland), enter into this Stipulation and Consent Agreement (Agreement). The Agreement resolves all issues arising from or pertaining to a non-public, preliminary investigation (investigation) that Market Oversight and Enforcement conducted under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2000), and that the Commission discussed in a Show Cause Order that it issued on March 14, 2000, AES Southland, Inc., 94 FERC ¶ 61,248 (2001), including the non-public Appendix thereto. The Agreement applies to only those events that occurred from April 25, 2000 through May 11, 2000 as stipulated and agreed upon below, related to the Alamitos and Huntington Beach generation plants, located in Los Angeles and Orange Counties, California, respectively.

**II.**

Market Oversight and Enforcement, Williams and AES Southland hereby stipulate and agree to the following:

A. The Agreement relates to two generation plants, Alamitos and Huntington Beach. AES Southland, based in Long Beach, California, owns, maintains and operates these plants. Williams markets the power from them. AES Southland purchased the plants from Southern California Edison Company (Edison) in May 1998. Until May 15, 2000, Edison maintained and operated the plants pursuant to written agreements with AES Southland, as required by section 363(a) of the California Public Utilities Code. One of these agreements, known as "Operation and Maintenance Agreement," executed by Edison and AES Huntington Beach, L.L.C. on May 15, 1998, states in part as follows: "Owner has interest in the short-term results achieved, compliance with all laws and the long-term impacts of Work on the Facility and, in preparing the O&M Plan and requesting Change Orders from time to time, may take an active role in determining what Work should be done." The Alamitos plant is comprised of six steam units and one combustion turbine peaking unit. Units 1 and 2 have a generating capacity of 175 MW each, Units 3 and 4 have a generating capacity of 320 MW each, and Units 5 and

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6 have a generating capacity of 480 MW each. The minimum run requirement for Alamos 5 is 70 megawatts. The Huntington Beach Units 1 and 2 have a generating capacity of 215 MW each. The minimum run requirement for Huntington Beach 2 is 20 megawatts.

B. Williams, based in Tulsa, Oklahoma, is a wholesale seller of electric power in California with authority granted by the Commission to charge market-based rates for energy and ancillary services. In May 1998, Williams and AES Southland executed a Capacity Sale and Tolling Agreement (Tolling Agreement). AES Southland filed the agreement with the Commission in Docket Nos. ER98-2184-004, ER98-2185-004 and ER98-2186-004. Williams and the California Independent System Operator (ISO) have entered into certain reliability must-run (RMR) agreements with respect to units at the Alamos and Huntington Beach plants known as Alamos 4 and Huntington Beach 2. Williams filed these RMR agreements with the Commission on April 13, 1999 in Docket Nos. ER98-441-000 and ER98-2550-000. Under the Tolling Agreement, AES Southland provides fuel conversion services and sells to Williams on an exclusive basis all dependable capacity from the Alamos and Huntington Beach plants (as well as from the AES Redondo Beach L.L.C. plant not at issue here).

C. The RMR agreements permit the ISO to issue dispatch notices only for the purposes of meeting local reliability needs or managing intra-zonal congestion. The RMR agreements and the ISO's tariff also state in substance that the ISO shall issue dispatch notices whenever market bids cannot be used to meet reliability needs. Under the RMR agreements, the ISO issues dispatch notices on a day-ahead basis. The RMR agreements state that the ISO may not issue a dispatch notice that requires the RMR unit's owner to provide service in a way that exceeds the RMR unit's design capabilities. Under the RMR agreements, in broad terms, the ISO pays Williams a hourly availability payment (payable monthly) for the availability of each RMR unit for dispatch by the ISO, and a second, variable fee intended to cover the variable costs of operating the RMR unit to satisfy the ISO's dispatch notice. If an RMR unit is not available for dispatch, the "Owner" is not required to provide a non-RMR unit as a substitute; the ISO may in its discretion call upon market bids to satisfy the generation requirements it determines are

needed. In this event, the ISO pays the owner or marketer of the market unit on an out-of-sequence basis, i.e., the price that the owner or marketer of that unit bid, rather than the price that would otherwise apply to the RMR unit that is unavailable. Certain non-RMR units owned by AES Southland, and from which power was marketed by Williams, had applicable bid prices during all periods of time relevant to this Agreement at or near the ISO's then-prevailing bid cap of \$750 per megawatt hour. Finally, the RMR agreements state that the units shall be operated and maintained in accordance with good industry practice and with due regard for the reliability purpose of the agreements.



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D. The Tolling Agreement governs the rights of Williams and AES Southland relative to the operation and sale of power from the Alamitos and Huntington Beach plants. Williams pays AES Southland a fixed monthly payment in arrears, based on the cumulative availability for each unit during the contract year. See Tolling Agreement (TA) § 5.1. AES Southland guaranteed that Alamitos 4 and Huntington Beach 2 would each be available 86 per cent of the twelve-month period beginning on June 1, 1999 and ending on May 31, 2000. See TA § 4.2 and Schedule 4.2. The fixed payment terms provide incentives for AES Southland to achieve the guaranteed availability of the units. Failure of a unit to meet its guaranteed availability results in a penalty or "Non-Availability Discount" to AES Southland under the Tolling Agreement. See TA § 4.3. The Tolling Agreement states that AES Southland will provide to Williams availability notices for each unit on a day-ahead basis. See TA § 8.1. These notices indicate whether, and the operational limits and capacity levels under which, Williams can dispatch power from each unit for sale into the market. See TA §§ 8.1, 8.2. Units undergoing maintenance may be unavailable for dispatch. The Tolling Agreement specifies three kinds of outages: planned, maintenance and forced. A planned outage is a removal of a unit from service to perform work on specific components that can be scheduled up to three years in advance and that has a predetermined start date and duration. See TA § 1.88 and Schedule 8.2. A maintenance outage is a removal of a unit from service to perform maintenance that can be deferred to the first Friday at least seven days later. See TA § 1.64. A forced outage is a removal of a unit from service for emergency reasons or due to an unplanned component failure or other condition requiring removal when insufficient time exists to declare a maintenance outage. See TA § 1.44. Time that a unit is out of service due to a maintenance or forced outage counts against the availability of the unit in determining whether AES Southland has met that unit's guaranteed availability and whether the "Non-Availability Discount" applies. The Tolling Agreement states that Williams and AES Southland will work together to agree on the timing of outages and will communicate with respect to the availability and status of each unit. See TA Schedule 8.2. It further states that AES Southland shall bear all costs of operation and maintenance and that it shall maintain the plants in accordance with accepted electrical practices, as that term is defined in the Tolling Agreement. See TA § 9.1. Finally, the Tolling Agreement states that AES Southland shall operate the plants in a manner not inconsistent with the RMR agreements. See TA § 9.1.

E. In February or March 2000, AES Southland identified a boiler tube leak at elevation 6 of Alamitos 4. On April 11, 2000, AES Southland faxed a maintenance outage notice to Williams stating that Alamitos 4 would be out of service for a period of five days beginning April 25, 2000, to repair the leak. After the ISO review of the outage request, including by the ISO engineering staff, the ISO approved the outage on April 14, 2000. AES Southland shut down Alamitos 4 on April 25 and began repair on the tube leak immediately. The leak was repaired in about two days.

F. On April 27, 2000, representatives of Williams and AES Southland discussed extending the outage to permit additional repairs to Alamitos 4. After ISO review of the extension

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request, the ISO approved an outage extension for an additional six days to (1) repair or replace several burners and associated equipment, including stainless steel flexible gas hoses, burner panels and gas horns, and (2) repair a leaky heater drip line that takes water from a heater to the condenser. This work was completed by May 5, 2000. Alamitos 4 returned to service on May 6, 2000.

G. In materials that Williams voluntarily provided to the Commission staff in the investigation, Williams disclosed that a non-managerial operations employee of Williams indicated to AES Southland that Williams did not object to the extension of the Alamitos 4 outage and the employee's belief that Williams could provide a financial incentive for AES Southland to extend the outage. Specifically, the employee indicated that the proposed extension of the outage would not count against the availability of the unit. However, Williams did not ultimately pay to AES Southland any financial inducement to extend the outage and AES Southland maintained control of the outage schedule.

H. Alamitos 4 was unavailable beginning April 25, 2000. The ISO called Alamitos 3 on an out-of-sequence basis. The ISO paid Williams at or very near the bid level of \$750 per megawatt hour for power that Alamitos 3 provided pursuant to the ISO's daily out-of-sequence calls for the period April 25 through May 5. Williams also sold power, or imbalance energy, from Alamitos 3 into the market on these days during hours when the market price was near its daily peak.

I. On May 5, 2000, AES Southland faxed a forced outage notice to Williams stating that Huntington Beach 2 would be shut down the following day due to nitrogen oxides (NOx) limitations. Huntington Beach 2 produces 1.07 pounds of NOx emissions per megawatt hour.<sup>11</sup> When Williams

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<sup>11</sup> The state regulatory body governing air quality in the Los Angeles metropolitan area, the South Coast Air Quality Management District (SCAQMD), has implemented a regime under which certain producers of emissions are each allotted a fixed number of emissions credits during a twelve month period allowing them to produce emissions equal to the number of emissions credits held each quarter. Emissions producers may lawfully exceed their annual allocations by purchasing credits from other producers willing to produce lower emissions. Under this regime, AES Southland was required to expend emissions credits for each increment of nitrogen oxides (NOx) emissions produced by the Alamitos and Huntington Beach plants. During April and May 2000, AES Southland had exceeded or was at risk for exceeding its NOx emissions credits. Accordingly, AES Southland needed either to purchase additional emissions credits or to curtail operations; otherwise, it would risk exceeding its specified emissions limits. Additional credits may have been available for purchase from other producers of emissions, but the average prices of such credits, if available, were between four and six

(continued...)

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presented to the ISO AES Southland's reason for the outage, the ISO's representative strongly questioned, and basically rejected, the requested outage and stated that AES Southland should buy sufficient NOx credits to operate the unit. Williams conveyed this response to AES Southland.

J. Later on May 5, 2000, after AES Southland faxed the first forced outage notice to Williams, but prior to Williams providing notice to AES Southland of the ISO's rejection of an outage based on NOx, AES Southland faxed a second forced outage notice to Williams with respect to Huntington Beach 2. The second notice cited a need to dredge the plant's circulation tunnels.<sup>12</sup> Mussel shells and silt had accumulated in the

tunnels, causing operational problems. Edison had, when it owned the facility, successfully addressed the problem posed by mussel larvae by scheduling and performing "heat treats," heating the water in the circulation tunnels, and thereby killing the larvae. This practice was discontinued in mid-summer 1998 after AES acquired ownership of the plant, but while the Edison-AES Huntington Beach L.L.C. Operation and Maintenance Agreement still governed operation of the plant. Williams conveyed the reason cited in the second notice to the ISO, which recognized the outage as forced. Pursuant to the ISO tariff, the ISO must accept a notice of forced outage.

K. AES Southland originally noticed to Williams the Huntington Beach 2 outage for three days. On May 6, 2000, the first day of the outage, the ISO called Alamitos 3 on an out-of-sequence basis. On May 7, 2000, the ISO did not call an out-of-sequence unit. From May 8 through May 11, 2000, the ISO called Alamitos 5 out-of-sequence. Alamitos 5 produces 0.15 pounds of NOx emissions per megawatt hour. The ISO did not continue to call Alamitos 5 out-of-sequence (or otherwise) after the 11th, although all other units at the Huntington Beach and Alamitos plants (except for Alamitos 4, which had resumed providing RMR service, and Alamitos 6) were unavailable due to forced outages.

L. Williams submitted bids for Alamitos 5 for the days it was called out-of-sequence at or near the then-existing maximum bid amount of \$750 per megawatt hour. The ISO paid Williams at or very near this level for an out-of-sequence dispatch of Alamitos 3 on May 6, 2000, and of Alamitos 5

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<sup>11</sup>(...continued)  
dollars per pound of NOx emissions per megawatt hour, a dramatic increase over historic prices.

<sup>12</sup>The circulating water system of the Huntington Beach plant consists of tunnels and other facilities to provide the plant with sea water for cooling. The sea water cools the exhaust steam in the main condensers. The sea water enters the plant through a tunnel outfitted with screens to prevent marine debris from fouling the condensers' heat exchangers. The screens, however, cannot intercept mussel larvae, which over time mature into adult mussels.

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from May 8 through May 11, 2000. Williams also sold imbalance energy from Alamitos 5 during this period. During the balance of May, Huntington Beach 2 remained unavailable, and therefore Williams was unable to receive revenues from the sale of power from this unit during this time that Williams could have received had the unit been available.

M. On March 14, 2001, the Commission issued a Show Cause Order in Docket No. IN01-3-000. The order stated that information obtained in the non-public investigation and contained in a non-public Appendix to the order raised serious questions about the following: (i) whether Williams and AES Southland violated the RMR contracts and tariffs on file with the Commission pursuant to section 205 of the Federal Power Act; (ii) whether Williams acted inconsistently with its market-based rate authority and the Market Monitoring Information Protocols of the ISO tariff; and (iii) whether AES Southland violated the Tolling Agreement it filed with the Commission pursuant to section 205 of the Federal Power Act. The order directed Williams and AES Southland to explain why the Commission should not require either or both of them to refund to the ISO, within twenty days of the date of the order, approximately \$10.85 million, representing the additional sums that the ISO paid Williams because Alamitos 4 was unavailable from April 25 through May 5 and Huntington Beach 2 was unavailable from May 6 through May 11. The order also instituted a formal, non-public investigation into the operation, maintenance and sales of power from the Alamitos and Huntington Beach plants during 2000 and 2001.

**III.**

A. Within five days of the date that the Commission approves this order, without modification, and that approval becomes final, Williams will refund to the ISO the sum of \$8,000,000. Williams shall credit this amount to any outstanding invoice that Williams may possess with respect to charges owed by the ISO to Williams. Within five days of the last date by which Williams agrees to credit the amount described in this paragraph, Williams will file with the Commission in this docket a refund report showing how Williams has completely discharged its refund obligation hereunder.

B. For one year after the Commission approves this Agreement, Williams agrees to accept the following condition on its market-based rate authority. If an RMR unit at the Alamitos or Huntington Beach plants that the ISO would have dispatched to provide voltage support or other reliability service, consistent with applicable RMR agreements, is unavailable due to a forced outage, the ISO may call a non-RMR unit, at either the Alamitos or Huntington Beach plants, to provide that service for the same compensation, including applicable availability amounts, and under the same terms had the RMR units been available; provided that Williams' obligation under this paragraph will in no event extend to more than a total of two non-RMR units at any one time.

**IV.**

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A. Market Oversight and Enforcement, Williams and AES Southland acknowledge and agree that this Agreement is a settlement of a claim investigated by the Commission under its plenary authority over wholesale electricity rates in interstate commerce and is a compromise and settlement of disputed claims. Nothing herein is intended to be an admission on the part of Williams or AES Southland of any violation or wrongdoing related to any claims asserted in these proceedings.

B. Market Oversight and Enforcement agrees to a full and complete settlement of all administrative or civil claims the Commission has or may have against Williams or AES Southland, or any of their officers, directors, or employees, either before the Commission or in the courts, relating to events that occurred relative to the operation of Alamitos 4 and Huntington Beach 2 from April 25, 2000 through May 11, 2000, including all matters raised in the March 14, 2001 Show Cause Order. The Agreement does not otherwise settle any aspect of the formal, non-public investigation instituted by the Commission in its March 14, 2001 Show Cause Order.

C. The Commission has made no findings on the merits with respect to alleged violations referenced in the March 14, 2001 Show Cause Order. While not an admission of any wrongdoing, Williams has taken action to ensure that no employee will in the future make any statement to AES Southland that could be interpreted as inappropriately attempting to influence facility operations. Upon approval by the Commission, this Agreement terminates the show cause proceeding.

D. Market Oversight and Enforcement, Williams and AES Southland agree that the non-public Appendix referenced in the March 14, 2001 Show Cause Order contains the type of information described in sections 388.107(g)(1) through (3) of the Commission's regulations, 18 C.F.R. §§ 388.107(g)(1) - (3) (2000). The Commission has not, as of the date it approves this Agreement, made public the non-public Appendix. The non-public Appendix was based on the preliminary investigation and as part of the Show Cause Order does not contain final findings. Upon approval of this Agreement, the Commission agrees that it will not make public the non-public Appendix pursuant to section 1b.9(a) of its regulations without an order of a court.

E. Market Oversight and Enforcement, Williams and AES Southland agree that they enter into this Agreement voluntarily and that other than the agreements set forth herein, no tender, offer, or promise of any kind whatsoever has been made by any party to this Agreement, or any member, employee, officer, director, agent or representative of any such party, to induce any other party to enter into this Agreement.

F. If the Commission does not issue an order which becomes final approving this Agreement, without modification, this Agreement shall be null and void and of no effect whatsoever and none of the parties to this Agreement shall be bound by any of its provisions or terms, unless they otherwise agree in writing.

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G. The undersigned representatives of Williams and AES Southland affirm that they have each read the representations set forth in the Agreement, that all of the matters set forth herein are true and correct to the best of their knowledge, information and belief, and that they understand that the Agreement is entered into by Market Oversight and Enforcement in express reliance on those representations.

H. The provisions of this Agreement are binding on Williams and its agents, successors and assigns, and on AES Southland and its agents, successors and assigns.

I. Williams and AES Southland waive judicial review by any court of any Commission order approving this Agreement, without modification.

J. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, and accepts this Agreement on the party's behalf.

K. This Agreement may be executed in counterparts.

Agreed to and accepted:

\_\_\_\_\_  
Andrea Wolfman, Lead Counsel  
Market Oversight and Enforcement

\_\_\_\_\_  
Date

\_\_\_\_\_  
Alex A. Goldberg, Senior Regulatory Counsel  
Williams Energy Marketing & Trading Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert H. Loeffler  
MORRISON & FOERSTER LLP  
2000 Pennsylvania Avenue N.W.  
Suite 5500

\_\_\_\_\_  
Date

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Washington, D.C. 20006  
Counsel for AES Southland, Inc.

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

AES Southland, Inc.  
William Energy Marketing & Trading Company

Docket No. IN01-3-001

(Issued April 30, 2001)

MASSEY, Commissioner, concurring:

The issue of whether generation has been withheld from the California market in order to drive up prices is a central concern in a number of proceedings before us now. Exercises of market power through withholding cause severe economic distortions and harm that are difficult, if not impossible, to rectify after the fact. Thus, remedies for market misconduct must be comparably severe enough to act as a deterrent. I agree with the comments of the California PUC on this issue. Our enforcement staff and the Commission as a whole must insist upon remedies that are aggressive enough to act as a deterrent to anticompetitive actions. In this respect, this settlement is not as strong as I would have preferred.

For these reasons, I respectfully concur with today's order.

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L. Massey  
Commissioner

William